

01
02
03
04
05
06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 ROBERT KOCHENDORFER,)
09 Plaintiff,) CASE NO. C11-1162-MAT
10 v.)
11 METROPOLITAN PROPERTY &) ORDER GRANTING MOTION TO
CASUALTY INSURANCE COMPANY,) CONFIRM APPRAISAL AWARD
12 Defendant.)
13 _____)

14 Plaintiff Robert Kochendorfer filed a Motion to Confirm Appraisal Award. (Dkt. 13.)
15 Defendant Metropolitan Property & Casualty Insurance Company filed a motion in opposition
16 and requested oral argument. (Dkt. 14.) Having considered the arguments raised in support
17 and in opposition to the motion, and finding oral argument unnecessary, the Court hereby
18 GRANTS plaintiff's motion as stated below.

19 This lawsuit arose out of an insurance claim submitted by plaintiff following a July 4,
20 2010 fire in a home insured pursuant to a policy issued by defendant. As dictated by the
21 policy, an appraisal panel met to set amounts of loss for property damage. (See Dkt. 13, Ex.
22 A.) Plaintiff now seeks confirmation of the unanimous appraisal panel decision. (Id., Ex. D.)

01 As a federal court sitting in diversity, the Court applies state law in this matter. *State*
02 *Farm Fire & Casualty Co. v. Smith*, 907 F.2d 900, 902 (9th Cir. 1990). Pursuant to
03 Washington law, “[t]he provisions of a fire insurance policy requiring an appraisal are
04 universally held to be valid and enforceable[.]” *Goldstein v. Nat’l Fire Ins. Co.*, 106 Wash.
05 346, 353, 180 P. 409 (1919); *Keesling v. W. Fire Ins. Co.*, 10 Wn. App. 841, 845-46, 520 P.2d
06 622 (1974). “An appraisal provision provides a method for establishing the dollar value of
07 damage sustained[.]” and “is justified in the expectation that it will provide a plain, inexpensive
08 and speedy determination of the extent of the loss.” *Keesling*, 10 Wn. App. at 845 (cited
09 source omitted).

10 An appraisal award may be judicially confirmed and enforced. *Id.* at 845-46 (appraisal
11 awards are not “self-executing” and, where damages are not paid, “an insured must commence
12 legal action, the appraisal must be confirmed by the court and judgment entered for the
13 insured.”) The award is “conclusive as to the amount of loss.” *Bainter v. United Pac. Ins.*
14 *Co.*, 50 Wn. App. 242, 246, 748 P.2d 260 (1988). However, “where the fairness of the
15 appraisal process is questioned by the insured, through allegations of bias, prejudice, or lack of
16 disinterestedness on the part of either an appraiser or the umpire, factual issues properly
17 reserved for jury determination may arise.” *Id.* A party presenting such a challenge to the
18 appraisal process must provide supporting evidence. *See id.* at 246-47.

19 Here, defendant does not dispute that Washington law allows for judicial confirmation
20 of an appraisal award, that the measure of damages is conclusive, and that the award may be
21 challenged only with substantive evidence of collusion, fraud, misconduct or mistake. (Dkt.
22 14 at 5 (citing *Goldstein*, 106 Wash. at 353; *Keesling*, 10 Wn. App. at 845). Nor does

01 defendant raise any challenge to the appraisal process in this case. *Id.* Instead, defendant
02 raises concerns about plaintiff's motivation and his construed "willingness to blur the
03 differences between appraisal amounts and covered losses under the applicable policy of
04 insurance." *Id.* at 6.

05 Defendant stresses that an appraisal award "resolves only issues of valuation not the
06 entire controversy." *Celebrations Caterers, Inc. v. Neth. Ins. Co.*, No. 06-1341, 2008 U.S.
07 Dist. LEXIS 7477 at *9 (E.D. Pa. Feb. 1, 2008). Defendant notes that the appraisal award
08 itself makes clear that it "does not address policy coverage, and all terms and conditions of the
09 insurance policy remain in force." (Dkt. 13, Ex. D.) Defendant contends that it has already
10 paid plaintiff the amounts he is entitled to under the applicable policy, disputes plaintiff's
11 entitlement to two items addressed in the appraisal award, and argues that the Court should not
12 dispose of this motion by making any coverage determinations, an issue neither addressed by
13 the appraisers, nor briefed by the parties.

14 The Court finds plaintiff entitled to an Order confirming the appraisal award.¹ The
15 Court clarifies that this Order does not address any continuing controversies in this case,
16

17 ¹Defendant fails to establish that this motion, restricted to a request to confirm the appraisal
18 award, should be treated as a motion for summary judgment and denied as not compliant with Local
19 Civil Rule 7(d)(3). The motion is clearly distinguishable from the cases cited by defendant and
20 involving other disputed, dispositive matters. *See, e.g., Brooks Family Partnership v. Granite State*
21 *Ins. Co.*, C09-5723-RJB, slip op. at 4 (W.D. Wash. Nov. 22, 2010) (defendant moved to confirm
22 appraisal award *and* dismiss any claims premised on defendant owing plaintiff anything further under
the insurance policy). Also, while the Court acknowledges the omission of an exhibit from plaintiff's
motion (*see* Dkt. 13 at 14, 16 (citing or discussing "Exhibit F")), it finds no basis for defendant's motion
to strike. (Dkt. 14 at 8.) The motion to strike relies, in part, on the interpretation of plaintiff's motion
as proceeding pursuant to summary judgment (*see id.* (discussing "Exhibit C" to plaintiff's motion)),
and is directed towards (1) a document not relevant to the Court's consideration of the underlying
motion (*id.*), and (2) a document issued by this Court and publically available on the Court's electronic
filing system (*id.* ("Exhibit F")).

01 including any coverage determinations. Instead, it serves only to provide confirmation of the
02 appraisal award as to amount of loss. As acknowledged by plaintiff, whether or not damage
03 amounts set by the appraisal panel are covered under the policy of insurance is an issue to be
04 resolved at a later date.

05 For the reasons stated above, plaintiff's Motion to Confirm Appraisal Award (Dkt. 13)
06 is GRANTED. The Clerk is directed to send a copy of this Order to the parties.

07 DATED this 22nd day of November, 2011.

08
09 

10 Mary Alice Theiler
11 United States Magistrate Judge
12
13
14
15
16
17
18
19
20
21
22